IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 694/1997

KISTURA Vs. BOARD OF REVENUE & ORS.

DATE: 29.10.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Virendra Manju for the petitioner.

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It is contended on behalf of the petitioner that the petitioner is in possession of land in question prior to its acquisition by the Government under the provisions of Imposition of Ceiling on Agriculture Holding Act, 1973 (for short 'the Act of 1973'). After declaring it surplus, on 19.01.83 the land in question was allotted to the respondent No.4 Gopal. This allotment was challenged by the petitioner before the Additional Collector, Tonk by way of filing appeal and the Additional Collector dismissed the same vide order dated 03.03.94 without considering the facts and material available on record.

Aggrieved and dissatisfied with the aforesaid judgment of the Assistant Collector, Tonk dated 03.03.94, the petitioner preferred second appeal before

the Board of Revenue and that too was dismissed vide order dated 04.12.96.

The main challenge to the allotment is on the ground that the allotment has been made in favour of the respondent No.4 without following the rules of allotment given under the Act of 1973. Learned counsel for the petitioner referred Rule 17 of the Imposition of Ceiling on Agriculture Holding Rules, 1973 (for short 'the Rules of 1973').

Rule 17 of the Imposition of Ceiling on Agriculture Holding Rules, 1973, deals with allotment of vested surplus land and in sub-rule (3) of Rule 17, criteria of priority has been laid down and preferably such land can be allotted to residents of the village Panchayat in which the land is situated and as amongst them preference will be given to person who belong to Scheduled Castes and Scheduled Tribes.

Further as per sub-rule 3(a)(ii) of Rule 17, the residents of village Panchayat which adjoin the village Panchayat in which the land is situated and as amongst them, preference will be given to person who belong to Scheduled Caste and Scheduled Tribes and person should be landless person who does not hold any land whether in his own name or in the name of any member of the joint family.

Further sub-rules 3(b), (c), (d), (e), (f) and (g) of Rule 17 of the Imposition of Ceiling on Agriculture Holdings Rules, 1973 reads as under:-

> “17(3)(b) Landless labourers of the village belonging to Scheduled Castes or Scheduled Tribes, released Bonded labourers and the beneficiaries of the Integrated Rural Development Programme.
>
> (c) A landless person who is a non-commissioned member of the armed Forces or a member of the Border Security force, and who has rendered not less than five years' service as such or who is an ex-serviceman.
>
> (d) A landless person who does not hold and land, whether in his own name or in the name of any member of the joint family.
>
> (e) Any other landless person residing in the village in which the vested land is situated.
>
> (f) A tenant of contiguous plot of land holding landless than the ceiling area applicable to him.
>
> (g) Any other landless person and persons identified as refugees and certified to be such by a competent officer designated in this behalf by the State Government and granted Indian Citizenship:
>
> Provided that if there are more than one applicants belonging to the same category for the same land, the land shall be allotted to the applicant whose application was received first:

> Provided further that no allotment of land shall be made so as to result in the allottee getting or holding land in excess of the ceiling area applicable to him."

Learned counsel for the petitioner also submits that mutation has been opened in the name of respondent No.4 but the possession has not been taken by him.

I have carefully gone through the order date 03.03.94 passed by the Additional Collector, Tonk and the order dated 04.12.96 passed by the Board of Revenue, Ajmer in second appeal.

It is not disputed by the petitioner that the land is declared surplus under the proceedings initiated under the Ceiling Act and the petitioner only challenged the allotment made in favour of the respondent No.4 on the ground that the allotment is not made following the due process of law and so far as mutation opened in favour of the respondent No.4 is concerned, is also not disputed and as per the petitioner, he is still in possession of the land in dispute and this aspect has been considered by the Additional Collector and while considering this aspect, he observed that even considering this aspect that the possession of the disputed land is with the petitioner, he can only be having a status of trespasser, but in

any case, the Additional Collector do not find it proper to entertain the appeal filed by the petitioner as mutation has been opened in favour of the respondent No.4 and the allotment has been made in accordance with the provisions of law.

The Board of Revenue has examined the fact that the petitioner is in possession of the land in dispute since long and allotment committee has not recognised his claim, but the Board of REvenue after considering the submissions made on behalf of the respective parties, observed that the allotment has been made as per rules and thus, the Board of Revenue has dismissed the second appeal filed by the petitioner vide its order impugned dated 04.12.96.

I have gone through the impugned orders dated 03.03.94 and 04.12.96 passed by the Additional Collector, Tonk and Board of Revenue, Ajmer respectively and also perused the provisions of Rule 17 of the Rules of 1973.

A procedure has been laid down for allotment and preferably surplus land can be allotted to the person belonging to Scheduled Caste and Scheduled Tribes if any landless person is within the village or in the adjoining village and if any such person is not found eligible to get the land allotted being a

landless person, then allotment can be made to a person belonging to other castes.

Having carefully gone through the relevant provisions, I find no illegality in the allotment order and the allotment of the land in dispute has been made after following the due process of law in favour of the respondent No.4 on 19.01.83

Thus, I find no illegality in the impugned orders dated 03.03.94 and 04.12.96 passed by the Additional Collector, Tonk and the Board of Revenue, Ajmer respectively. I also do not find any substance in the writ petition.

Accordingly, the writ petition fails and the same is hereby dismissed.

The stay application also stands dismissed.

(K.S. RATHORE),J.

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